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**WTO Appellate Body Finds U.S. Sea Turtle Law Meets WTO Criteria  
But Faults U.S. Implementation**

The Appellate Body of the World Trade Organization (WTO) today issued a report in a case brought by Malaysia, Thailand, India and Pakistan against a U.S. law restricting imports of shrimp caught in a way that harms endangered species of sea turtles. The Appellate Body reversed the findings of an April 1998 dispute settlement panel report, saying that the earlier panel's interpretation was "a result abhorrent to the principles of interpretation we are bound to apply." It agreed with the United States that the U.S. law is covered by an exception to WTO rules for measures relating to the conservation of exhaustible natural resources, but it faulted the way in which the law was administered.

"The Appellate Body has rightly recognized that our Shrimp-Turtle law is an important and legitimate conservation measure, and not protectionist," said U.S. Trade Representative Charlene Barshefsky. "But we disagree with the Appellate Body's assessment that we have not implemented the law in an even-handed manner."

Ambassador Barshefsky said that the Administration will be consulting with Congress and interested members of the public, and reviewing its options for responding to the report. She also stated, "This Administration is committed to the highest levels of environmental protection and the protection of endangered species, including sea turtles. The Appellate Body report does not suggest that we weaken our environmental laws in any respect, and we do not intend to do so. We will evaluate our options in light of what best achieves our firm objective of protecting endangered sea turtles."

The Appellate Body agreed with the United States that the General Agreement on Tariffs and Trade (GATT) and all the other WTO agreements must be read in light of the preamble to the WTO Agreement, which endorses sustainable development and environmental protection. The report confirms that WTO member countries can condition access to their markets on compliance

with policies such as environmental conservation, so long as these market access restrictions are administered in an even-handed manner and do not amount to disguised protectionism.

In an important procedural ruling, the Appellate Body reversed the panel's findings on *amicus curiae* briefs, and affirmed that WTO rules permit panels to consider such briefs from non-governmental environmental organizations and other interested parties. "I am particularly pleased by the Appellate Body finding that the WTO's dispute settlement mechanism is open to input from the public, as we have insisted," Ambassador Barshefsky noted.

She also emphasized that the WTO report will have no effect on the Administration's resolve to continue its leadership in promoting sea turtle conservation worldwide. The United States worked closely with other countries to negotiate a comprehensive agreement to protect sea turtles in the Western Hemisphere. Under this agreement, countries of the region will commit themselves to comprehensive sea turtle protection programs, including the continued use of turtle excluder devices (or "TEDs") in areas where there is a likelihood of incidental capture of sea turtles in shrimp trawl fisheries. Ambassador Barshefsky also noted that the United States is pressing for negotiations with countries in the Indian Ocean region toward a comprehensive agreement to conserve sea turtles. In addition, during the past two years alone, the United States has spent almost half a million dollars funding training seminars around the world to educate foreign government officials and shrimp fishermen on the use of TEDs, which prevent sea turtles from drowning in shrimp nets.

## **Background**

Sea turtles are ancient and far-ranging species, with migratory patterns extending throughout the oceans of the world. Due to the harvesting of sea turtles and their eggs, and to accidental mortality associated with shrimp trawling and other fishing operations, all but one species of sea turtles have become threatened or endangered with extinction throughout all or part of their range.

Researchers have developed special equipment, known as the Turtle Excluder Device, or TED, that virtually eliminates accidental deaths of sea turtles in shrimp trawl nets. For almost a decade, the United States has required that U.S. shrimp fishermen employ TEDs. Experience has shown that the use of TEDs, combined with other elements of an integral sea turtle conservation program, can stop the decline in sea turtle populations and will, over time, lead to their recovery.

The U.S. law at issue -- Section 609 of Public Law 101-162 -- restricts imports of shrimp harvested with fishing equipment, such as shrimp trawl nets not equipped with TEDs, that results in incidental sea turtle mortality. The law ensures that the U.S. market demand for imported shrimp does not lead to the further endangerment of sea turtles. Contrary to some reports, this case does not involve the Endangered Species Act.

In October 1996, India, Malaysia, Thailand and Pakistan requested consultations with the United States under WTO dispute settlement procedures regarding the U.S. import restrictions under Section 609, claiming that it was inappropriate for the United States to prescribe their national conservation policies. The parties held consultations on November 19, 1996. In April 1997, the WTO established a three-person dispute settlement panel to consider the claims of the four

complaining countries.

The panel issued its findings on April 6, 1998. The panel found that the U.S. measure was inconsistent with the Article XI of the General Agreement on Tariffs and Trade (GATT), which provides that WTO Members shall not maintain import restrictions. The United States had maintained that its measure falls within the exceptions under GATT Article XX(g) (measures relating to the conservation of an exhaustible natural resource) and XX(b) (measures necessary for the protection of animal life or health), but the panel found that the U.S. measure amounted to an unjustifiable discrimination between countries, and therefore did not comply with the conditions in the introductory sentence of Article XX.

The United States filed its notice of appeal with the WTO Appellate Body on July 13, 1998. The Appellate Body heard oral argument by the parties on August 19 and 20, 1998, and considered legal arguments set out in three *amicus curiae* briefs submitted by non-governmental environmental organizations. The Appellate Body issued its findings on October 12, 1998, meeting the 90-day deadline for appeals provided under WTO procedures.

The Appellate Body found fault with the way in which the United States has administered the statute, not with the statute itself. The Appellate Body agreed with the United States that the Shrimp-Turtle law enacted by Congress is covered by the exception in GATT Article XX(g) for measures relating to exhaustible natural resources, but it found that the manner in which the United States has administered the law resulted in arbitrary and unjustifiable discrimination against the four complaining countries.

The Appellate Body criticized the fact that even if shrimp were caught with TEDs, the law, as implemented at the time it was examined by the panel, would prohibit imports of that shrimp unless the exporting country had a national regulatory program comparable to that of the United States. It also found that the United States unjustifiably discriminated against the four complaining countries by providing a shorter phase-in period for them than for others. (The complaining countries were given four months to meet U.S. standards while others were given three years.) The Appellate Body also found that insufficient account was taken of different conditions in the countries where the shrimp exports originated and that -- while the U.S. law properly recognizes the importance of securing international agreements for the protection and conservation of sea turtles -- the United States made inadequate efforts to engage in such negotiations with the complaining countries prior to applying the law to them. In addition, the Appellate Body found U.S. authorities' application of the law resulted in arbitrary discrimination because they had not provided those countries with an adequate opportunity to be heard and to respond to arguments made against them in deciding whether to restrict imports of their shrimp.

The Appellate Body report recommends that the United States bring the manner in which the Shrimp-Turtle law is implemented into conformity with its WTO obligations, but it is up to the United States to determine how to respond.